



17 JUL 2003

Ivor R. Elrifi  
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.  
One Financial Center  
Boston, MA. 02111

In re Application of  
FARMER, et al.  
U.S. Application No.: 09/424,527  
PCT No.: PCT/US98/11347  
Int. Filing Date: 03 June 1998  
Priority Date: 03 June 1997  
Attorney Docket No.: 19374-503

For: PROBIOTIC LACTIC ACID BACTERIUM:  
TO TREAT BACTERIAL INFECTIONS  
ASSOCIATED WITH SIDS

## DECISION ON PETITION

UNDER 37 CFR 1.137(b)

This decision is in response to applicant's "Petition to Revive Unintentionally Abandoned Application Under 37 CFR § 1.137(b)" filed 29 May 2003 in the United States Patent and Trademark Office (USPTO). Applicant has provided payment of the \$650.00 small entity petition fee.

**BACKGROUND**

On 27 June 2000, applicant was mailed a decision dismissing applicant's petition under 37 CFR 1.47(a) to accept the application without the signature of co-inventor Robert J. Mikhail. Applicant was afforded two months to file any request for reconsideration.

On 11 April 2003, applicant was mailed a "Notification of Abandonment" (Form PCT/DO/EO/909) informing applicant that the application was abandoned as to the National stage in the United States for failure to respond to the decision mailed 27 June 2000.

On 29 May 2003, applicant filed the present petition to revive accompanied by an executed combined declaration and power of attorney of the inventors; a check in the amount of \$650.00 as payment of the petition fee and a check in the amount of \$725.00 as payment of the fee for filing a petition for a four-month extension of time.

**DISCUSSION**

Applicant is advised that as the application was abandoned as to the United States, the only petition fee required is that for the petition to revive pursuant to 37 CFR 1.137(b). As such, the \$725.00 extension of time payment will be refunded to Deposit Account No.: 50-0311.

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

With regard to Item (1), the proper response was a grantable petition under 37 CFR 1.47(a) or a compliant oath or declaration of the inventors. Applicant has presently filed an executed combined declaration and power of attorney of the inventors.

As to Item (2), applicant has included the petition fee of \$650.00 along with the present petition.

With regard to Item (3), applicant's statement that the "the entire delay in filing the response to the Notification of Missing Requirements mailed March 24, 2000 was unintentional" is being interpreted to mean that the entire delay in providing the proper reply from the due date for providing the proper reply until the filing of a grantable petition pursuant to this paragraph was unintentional. If this is an incorrect reading of applicant's statement applicant should contact the Office of PCT Legal Administration immediately. Applicant's statement and the prompt filing of the petition satisfies the requirement of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate. Further, a review of the present filing reveals that applicant has presently submitted an executed declaration of the inventors and thus all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have been satisfied.

### **CONCLUSION**

For the reasons stated above, applicant's petition to revive under 37 CFR 1.137(b) is **GRANTED**.

As detailed above, the \$725.00 extension of time payment will be refunded to Deposit Account No.: 50-0311.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision. The 35 U.S.C. 371(c) date is **29 May 2003**.

A handwritten signature in cursive script, appearing to read "Derek A. Putonen".

Derek A. Putonen  
Attorney Advisor  
Office of PCT Legal Administration  
Tel: (703) 305-0130  
Fax: (703) 308-6459